

*HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR

+WRIT PETITION (TR) No.718 OF 2017

% Dated 13.02.2023

Between:

Mohammed Azhar Hussain ...Petitioner

and

\$ The Superintending Engineer (R&B)
Rural Circle, Bal,ampet Hyderabad-500018 and others.

.... Respondents

! Counsel for the petitioner : Mr. Chilpireddy Narsireddy
^ Counsel for the respondents : Govt.Pleader for Services II and III

< GIST : ---

>HEAD NOTE : ---

? Cases referred: :

1. AIR 2000 (SC) 1080
2. (2005) 5 SCC 569
3. 2002(5) SCC 520

HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION (TR) No. 718 of 2017ORDER:

Heard Sri Chilpireddy Narsi Reddy, learned counsel for the petitioner, the Government Pleader for Services-III for the respondents and perused the material available on record.

2. The present writ petition (TR) is filed to call for the records relating to and connected with the impugned proceedings No.E6/1324/2011/07/2013, dated 21.05.2013 of respondent No.1 and *set aside* or quash the same by holding the same as illegal, arbitrary, improper and imposing the punishment of termination without regular enquiry is bad in law and stigmatic in nature and contrary to the various judicial pronouncements including violation of all principles of natural justice and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits thereon.

3. It is the case of the petitioner that the father of the petitioner by name late Mohd. Shukur had expired while working as Office Subordinate in the respondents' organization on 04.05.2012 in harness. The mother of the petitioner has

submitted an application on 28.07.2012 before respondent No.1, wherein she requested for appointment to her son i.e., the petitioner herein, in a suitable post on compassionate grounds and along with the application, she enclosed the required documents. Taking into consideration of all the aspects, respondent No.1, being an appointing authority, issued appointment orders *vide* proceedings No.E6/1324/CA/2011/216, dated 08.10.2012, appointing the petitioner as Watchman under social security measure on compassionate grounds. After receiving the above orders, the mother of the petitioner and the petitioner made representations before respondent No.1, requesting to appoint the petitioner as Office Subordinate instead of Watchman. After careful examination, respondent No.1 issued modification orders *vide* proceedings No.E6/1324/2011/2731, dated 20.11.2011 appointing the petitioner as Office Subordinate instead of Watchman and posted in the office of respondent No.2. Accordingly, the petitioner joined in the office of respondent No.2 on 21.11.2012 and since then he is discharging his duties as Office Subordinate without any complaints.

4. It is further submitted that at the time of submitting his application for compassionate appointment, the petitioner has enclosed the Transfer Certificate, Bonafide Certificate and SSC failed Memo, Community, Nativity and Date of Birth Certificate issued by the institutions concerned and in all these certificates, the date of birth of the petitioner was entered as 24.08.1993 and after verifying the above documents only, the appointment orders were issued to the petitioner.

5. It is further submitted that while the matter stood thus, the above certificates were sent to the D.E.O., Hyderabad for verification of its genuineness. *Vide* letter, dated 09.01.2013, it is informed by the D.E.O., Hyderabad, that as per Admission Register of Crown International High School, Qazipura, Hyderabad, the date of birth of the petitioner is 24.08.1997 but the date of birth in Bonafide Certificate is tampered as 24.08.1993 and therefore, the Bonafide Certificate and Transfer Certificate of the petitioner are not genuine. Basing on the said information, respondent No.1 straight away issued show cause notice *vide* Memo No.Suptd./1324/2011/3657, dated 15.02.2013 to the petitioner calling for his explanation

directing to explain for the serious lapse i.e., the date of birth in both the Transfer Certificate and Bonafide Certificate have been tampered within two weeks. It is further submitted that the petitioner has submitted a detailed explanation on 25.02.2013, wherein he has categorically stated that the date of birth entered in the transfer certificate as 24.08.1993 is authentic and correct and further stated that as per S.S.C. fail memo, issued by the Board of Secondary Education, A.P., Hyderabad, his date of birth is 24.08.1993 but not 24.08.1997 and requested the authorities if any doubt, the same may be addressed to the authorities concerned, but without considering his explanation and without conducting any due enquiry in the matter, respondent No.1 in a hasty manner issued the impugned termination order, dated 21.05.2013. Hence, the petitioner has filed the present Writ Petition (TR).

6. By an order, dated 08.07.2013, while admitting the above matter, the then Andhra Pradesh Administrative Tribunal has passed the following order:-

"The applicant in this application is an Office Subordinate. He has filed this application aggrieved

by the orders of termination issued vide proceedings No.E6/1324/2011/07/13, dated 21.05.2013.

2. It is the case of the applicant that he came to be appointed as an Office Subordinate vide Proc.No.E6/1324/2011/2731, dated 20.11.2011 in pursuance to which he reported to duty and discharging the duties as Office Subordinate. While the matter stood thus, he was issued a show-cause notice dated 15.02.2013 calling for the explanation of the applicant with regard to the entry of date of birth in the School Records. The applicant has submitted his explanation on 25.02.2013. The respondents have issued the impugned orders vide Proc.No.E6/1324/2011/07/13, dated 21.05.2013 terminating the services of the applicant. This action of the respondents is illegal, arbitrary, for the reason that, the respondent authorities have gathered incriminating evidence against the applicant from the Education Department without conducting a detailed enquiry as contemplated under Rule 20 of A.P.C.S. (CC&A) Rules and have chosen to pass the impugned termination orders. Therefore, the impugned orders are liable to be set aside.

3. The balance of convenience does lie in favour of the applicant. Therefore, following interim order is passed:-

4. *Admit. Issue notice to the respondents returnable in four weeks.*

5. *Pending disposal of the O.A., there shall be interim suspension of the impugned proceedings No.E6/1324/2011/07/13, dated 21.05.2013 of the 1st respondent with a direction to the respondents to retain and continue the applicant as Office Subordinate."*

7. After passing the above interim order, the respondents have filed vacate stay petition along with counter *inter alia* stating that the petitioner was appointed as Office Subordinate on compassionate grounds and he had joined in the office of respondent No.2 on 21.11.2012 F.N. It is further stated that as per the procedure, the 7th Class Bonafide Certificate and the T.C. submitted by the petitioner have been sent to the D.E.O., Hyderabad, for their genuineness, who in turn has informed that as per the Admission Register of Crown International High School, Qazipur, Hyderabad, the date of birth of the petitioner is 24.08.1997 and the same was tampered as 24.08.1993 in the 7th Class Bonafide certificate and the T.C. and that the Bonafide Certificate are not genuine *vide* letter, dated 09.01.2013. Basing on the contents of the said letter, a memo,

dated 15.02.2013, has been issued to the petitioner calling for his explanation for tampering the 7th Class Bonafide Certificate, to which the petitioner has submitted his explanation and requested to address to the Board of Secondary Education, Hyderabad, for confirmation. Therefore, the SSC Marks Memo was sent to the Additional Joint Secretary, Director of Government Examination, Hyderabad, to confirm its genuinity and the Additional Joint Secretary, has informed that as per their office records the entries in the SSC are not tallied with his office and the SSC Memo submitted by the individual has not been issued by his office. It is further stated that basing on the information submitted by the D.E.O., and the Additional Joint Secretary, the explanation submitted by the petitioner is not convincing and the petitioner has tampered the date of birth in bonafide certificate for the sake of appointment under compassionate grounds and accordingly, the petitioner was terminated from service. Therefore, prayed to dismiss the writ petition.

8. The contentions of the petitioner are in three fold. Firstly, the impugned termination order was passed without

conducting any departmental enquiry, which is illegal and contrary to the law laid down by the Apex Court and also violative of principles of natural justice. Secondly, the respondents authorities have wrongly interpreted the contents of the letter dated 29.10.2012 of the Additional Joint Secretary to the Director of Government Examinations, Andhra Pradesh Hyderabad and therefore, prayed to allow the writ petition. Thirdly, the termination order is a stigmatic in nature and the same attracts a stigma against the applicant and by virtue of said termination punishment definitely affects his chances of employment anywhere. In support of his contention, he relied on the judgments of the Apex Court in *V.P.Ahuja v. State of Punjab and others*¹ and *State of Punjab and others v. Sukhwinder Singh*².

9. The Government Pleader for Services-III has submitted that since the petitioner has obtained compassionate appointment by producing fake certificate, it is not necessary for the respondents to conduct enquiry and therefore, prayed to dismiss the writ petition.

¹ AIR 2000 (SC) 1080

² (2005) 5 SCC 569

10. The point that arises for consideration is whether the petitioner had given an opportunity of being heard before terminating his services and in the absence of the same whether such termination is valid?

11. Point:

Admittedly, the petitioner was appointed as Office Subordinate on compassionate grounds as his father, who was working as Office Subordinate in the respondents' department, died in harness. It is also not in dispute that while submitting the representation for compassionate appointment he has enclosed the Transfer Certificate, Bonafide Certificate and SSC failed memo, community, nativity and date of birth certificate issued by the institutions concerned and after verifying the above said certificates only, the respondent authorities have appointed the petitioner as Office Subordinate. The said documents were sent to the D.E.O. and the Additional Joint Secretary to the Director of Government Examination, Hyderabad, to verify their genuineness. The D.E.O. has informed that as per the admission register of Crown International High School, Qazipur, Hyderabad, the date of birth

of the petitioner was 24.08.1997 and the same was tampered as 24.08.1993 in 7th Class Bonafide Certificate and therefore, the T.C. and the Bonafide Certificate are not genuine.

12. As regards the contention that the impugned order attracts stigma against the petitioner is concerned, the allegation against the petitioner is that the Bonafide Certificate/Transfer Certificates were tampered and SSC failed certificate submitted by him has also not been issued by the concerned department.

13. Admittedly, the T.C. was not issued by the Crown International High School, Qazipur, Hyderabad and the same was issued by the Head Mistress, Government High School, Galbaiguda, Tadban, Hyderabad. In the Transfer Certificate (T.C.), it is specifically mentioned that the date of birth of the petitioner is 24.08.1993 and also mentioned the same in the words as "Twenty Four August Nineteen Ninty Three). Further, though there is a specific pleading in the counter that the Additional Joint Secretary to the Director of Government Examination, Hyderabad, has informed that as per his office records the entries in the S.S.C. are not tallied with his office

and the S.S.C. submitted by the petitioner has not been issued by his office, but the record is otherwise. Therefore, it is appropriate to refer to the contents of the letter, dated 29.10.2012, basing on which the respondents have contended that the SSC submitted by the petitioner has not been issued by the office of the Additional Joint Secretary to the Director of Government Examinations, Andhra Pradesh, Hyderabad.

"... With reference to the cited, it is informed that the proposal for verification of SSCs received vide reference cited is returned herewith due to the below mentioned objection.

- i) Photocopy of SSCs cannot be verified. The original Fail SSCs is/are required to be submitted for verification of genuineness.*
- ii) As per the Government order a search fee of Rs.100/- (Rupees one hundred only) is prescribed per each SSC and it has to be remitted to the following head of account.*
- iii) As per this office records the entries in the SSC are not tallied with this office.*
- iv) The SSC submitted by you has not been issued by this office. ...*

A demand Draft for Rs.100/- should be obtained from State Bank of Hyderabad or State Bank of India in favour of "Secretary to the Commissioner for Government Examinations, A.P., Hyderabad".

I, therefore, request you to resubmit the proposal after rectifying the objection."

14. It is clear from the contents of the above letter that the proposal for verification of SSCs received was returned due to the objection such as "photocopy of SSCs cannot be verified. The original fail SSCs is/are required to be submitted for verification of genuineness" and the other objections mentioned are only proforma and they are not relevant and objection (i) is only relevant to the case of the petitioner.

15. Further, the record also reveals that in order to comply with the objection, respondent No.1 addressed a letter, dated 03.04.2013 to the Additional Joint Secretary, Director of Government Examination, Andhra Pradesh, Hyderabad, submitting the original fail SSC certificate and original demand draft for Rs.100/- bearing No.58413 dated 03.04.2013, in respect of the petitioner for verification of genuineness. *Vide* letter, dated 25.04.2013, the Additional Joint Secretary to the Director of Government Examinations, Andhra Pradesh, Hyderabad, informed respondent No.1 that the SSC fail memo of the petitioner cannot be verified as per their office rules and the proposal was returned under objection. The record reveals

that there is no comment offered by the Additional Joint Secretary to the Director of Government Examinations, Andhra Pradesh, Hyderabad, that the Secondary School Certificate is not genuine and it was returned stating that the SSC fail memo of the petitioner cannot be verified as per their office rules.

16. From the above, it is clear that the respondent authorities have wrongly interpreted the contents of the letter in Rc.No.95/D1-1/2012 dated 29.10.2012 of the Additional Joint Secretary to the Director of Government Examinations, Andhra Pradesh, Hyderabad, basing on which the respondents have terminated the petitioner stating that the "SSC submitted by you has not been issued by this office", but the contents of the letter dated 29.10.2012 and letter dated 25.04.2013 are otherwise, wherein the proposal for verification of the genuineness of the SSC fail memo was returned under objection. That apart, as per the contents of the Transfer Certificate which was issued by Head Mistress, Government High School, Galbaiguda, Tadban, Hyderabad and SSC Fail Memo, which was issued by the Additional Joint Secretary, Board of Secondary

Education, Andhra Pradesh, the date of birth of the petitioner was 24.08.1993.

17. As regards the contention of the learned counsel for the petitioner that the termination order itself is unconstitutional as the same was issued without conducting any departmental enquiry, in *Phvanendra Narayan Verma v. Sanjay Gandhi P.G.I. of Medical*³ the Apex Court has categorically held as under:-

“One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry. (b) into allegations involving moral turpitude or misconduct (c) which (c) culminated in a finding of guilt.

If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.”

18. The judgments relied upon by the learned counsel for the petitioner i.e., *V.P.Ahuja v. State of Punjab and others (1 supra)* and *State of Punjab and others v. Sukhwinder Singh (2 supra)* relate to the termination of the employee, who was

³ 2002(5) SCC 520,

under probation, wherein the Apex Court held that “a probationer, like a temporary servant, is also entitled to certain to protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.”

19. A perusal of the impugned order, dated 21.05.2013, would show that respondent No.1 has relied upon the report of the District Educational Officer, which is evident that the correct date of birth of the petitioner was 24.08.1997 and that he has not completed 15 years of age as on 01.07.2013 and falling shortfall of three (03) years to the required age of 18 years as required under Rule 8 of the A.P. Last Grade Services Rules, 1992 and therefore, he is not to be fit for the appointment as Office Subordinate or any other post in the Department under compassionate grounds and since the appointment of petitioner was made under emergency service rules subject to the verification of character and antecedents, the services of the petitioner was hereby terminated from the post of Office Subordinate with immediate effect.

20. In *Phvanendra Narayan Verma* (3 supra) the Apex Court observed that "in order to constitute a stigmatic order necessitating a formal inquiry, it would have to be seen whether prior to the passing of the order, there was an inquiry into the allegations involving moral turpitude or misconduct so that the order of discharge was really a finding of guilt. If any of these three factors are absent, the order would not be punitive. We have also held that stigma in the wider sense of the word is implicit in every order of termination during probation. It is only when there is something more than imputing unsuitability for the post in question, that the order may be considered to be stigmatic."

21. In the instant case also, admittedly, the termination order has been issued without conducting any departmental enquiry. It is well settled law that if there has been no appropriate departmental enquiry or no enquiry at all before the disciplinary action is taken, it is open to the employee to ask for such opportunity.

22. That apart by an order, dated 18.07.2017, this Court adjourned the matter for production of original records of SSC

of the petitioner from the Board of Secondary Education. Till date no original Secondary School Certificate of the petitioner has been produced before this Court. Further, while passing the interim order, dated 08.07.2013, the Tribunal has rightly observed that *"the respondent authorities have gathered incriminating evidence against the petitioner from the Education Department without conducting a detailed enquiry as contemplated under Rule 20 of A.P.C.S. (CC & A) Rules."* In the absence of original Secondary School Certificate and looking into the pleadings, which are contradictory to the material and correspondence on record and as stated supra no opportunity of hearing was given to the petitioner and the services of the petitioner was terminated without conducting full scale formal enquiry, this Court is of the considered view that the impugned order terminating the services of the petitioner is punitive, violative of principles of natural justice and bad in law and as such the impugned proceedings No.E6/ 1324/2011/07/2013, dated 21.05.2013 issued by respondent No.1 terminating the petitioner from service, is liable to be set aside.

23. Accordingly, the Writ Petition is allowed by setting aside the impugned proceedings No.E6/1324/2011/07/2013, dated 21.05.2013, issued by respondent No.1. Since the petitioner has already been reinstated into service in terms of the interim order, dated 08.07.2013, issued by the Tribunal, the petitioner shall be retained in service with all consequential benefits. There shall be no order as to costs.

Miscellaneous application, if any pending, shall stand closed.

13.02.2023
gkv

N.V.SHRAVAN KUMAR, J

HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION (TR) No.718 of 2017

Date: 13.02.2023

gkv